

**TOWN OF RIVERHEAD  
Community Development Agency  
Resolution #10**

**AUTHORIZES CHAIRMAN TO SIGN NYSDOT TRI-PARTY GRANT CONTRACT**

Councilman Dunleavy offered the following resolution,

which was seconded by Councilman Wooten

**WHEREAS**, the New York State Department of Transportation (NYS DOT) Calverton Industrial Enterprise Park Freight Rail Access Rehabilitation (PIN #0935.61) Economic Recovery Project in the Town of Riverhead, in Suffolk County, (hereinafter "the Municipality/Sponsor") is eligible for and has been awarded funding under Title 23 U.S. Code, as amended, (the "Recovery Act") according to the apportionment of the costs of such program to be borne at the ratio of 100% Federal funds and 0% non-federal funds to support, among other things, important infrastructure projects that help attract businesses, improve commerce and revitalize local economies; and

**WHEREAS**, the Town of Riverhead Community Development Agency (CDA) Board desires to foster the continued development of infrastructure at the Calverton Enterprise Park site to encourage continued economic development at the site consistent with the comprehensive plans; and

**WHEREAS**, on February 11, 2010, the CDA Board adopted Resolution No. 2 entitled, "Awards Calverton Rail Access Rehabilitation Contract" in the amount of Three Million Four Hundred Ninety Six Thousand Six Hundred Eighty Four & 00/100 (\$3,496,684.00); and

**WHEREAS**, the Town Engineer and NYS DOT have recommended that additional work is required due to the installation of a turnout switch from the mainline off the Long Island Railroad (LIRR) causing the need for additional materials and labor to complete the switch installation for an increase of Three Hundred Ten Thousand Five Hundred Eighty-Four & 50/100 Dollars (\$310,584.50) under the Recovery Act; and

**WHEREAS**, the installation of the switch on LIRR right of way is not eligible for funding under the Recovery Act, however, is an integral part to the Calverton Freight Rail Access Rehabilitation; and

**WHEREAS**, NYSDOT has secured additional non-Recovery Act NYS funding for the installation of the switch on LIRR right of way to cover LIRR force account labor and other costs; and

**WHEREAS**, NYSDOT will reimburse LIRR directly, however, NYSDOT has requested that the Town of Riverhead sign the attached tri-party agreement as well.

**NOW, THEREFORE, BE IT RESOLVED**, that the Town of Riverhead Chairman be and is hereby authorized to sign the attached tri-party agreement with NYSDOT and LIRR subject to review and approval by the Town Attorney; and

**BE IT FURTHER RESOLVED**, that the Town Clerk is hereby directed to forward a copy of this resolution to the Community Development Agency.

**THE VOTE**

Giglio <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Gabrielsen <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Wooten <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Dunleavy <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Walter <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

The Resolution Was ☒ Was Not ☐  
Thereupon Duly Declared Adopted

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION**

**GRANT AGREEMENT**

**THE LONG ISLAND RAILROAD COMPANY**

**TOWN OF RIVERHEAD**

**COMPTROLLER CONTRACT # \_\_\_\_\_**

**PROJECT IDENTIFICATION #0935.61.301**

This Agreement dated this 9<sup>th</sup> day of April, 2010, by and between the People of the State of New York (hereinafter referred to as "STATE") acting by and through the Commissioner of the Department of Transportation (hereinafter referred to as "COMMISSIONER"), with offices at 50 Wolf Road, Albany, New York 12232, the Long Island Railroad Company, (hereinafter referred to as the "GRANTEE"), with offices at Jamaica Station, Jamaica, New York 11435-4380, a public benefit corporation and a subsidiary of the Metropolitan Transportation Authority (hereinafter referred to as the "MTA") with offices at 347 Madison Avenue, New York, NY 10017-3739 and the Town of Riverhead with offices at 200 Howell Avenue, Riverhead, New York 11901, provides funding for the design, construction, reconstruction, improvement or rehabilitation of rail facilities as is more fully described in Appendix I of this Agreement.

**WITNESSETH**

**WHEREAS**, the STATE, GRANTEE and the Town of Riverhead wish to provide for the preservation and improvement of the Project Facilities so as to allow for the safe and efficient movement of rail and vehicular traffic; and,

**WHEREAS**, the Town of Riverhead is the local sponsor of Comptroller's Contract D032417, effective January 8, 2010, CALVERTON INDUSTRIAL ENTERPRISE PARK FREIGHT RAIL ACCESS REHABILITATION, located in the Towns of Brookhaven and Riverhead, County of Suffolk, with funding provided by the American Recovery and Reinvestment Act (ARRA), and

**WHEREAS**, the utility of the Town of Riverhead's project is dependent on its

connection with the contiguous railroad system of the United States, specifically connecting with the Main Line of the Long Island Railroad (LIRR) at Milepost 67.56, and likewise the utility of such connection is dependent on the completion of the Town of Riverhead's project and

**WHEREAS**, ARRA funds are not available for the installation of the connecting switch by LIRR forces, and

**WHEREAS**, Section 14 of the Transportation Law authorizes the COMMISSIONER to enter into contracts for the purpose of maintaining and improving rail transportation service; and,

**WHEREAS**, the total cost for this project is three hundred fifty thousand dollars (\$350,000); and,

**WHEREAS**, by Chapter 54, Section 1, of the Laws of 1994 and Chapter 54, Section 1 of the Laws of 1996, Rail Passenger and Freight Rail Preservation Purpose funds have been appropriated to the Department of Transportation to provide assistance to Railroads for the payment of the STATE's share of a rail project to be undertaken in accordance with the provisions of the aforesaid Section 14 of the Transportation Law; and,

**WHEREAS**, it has been determined to be in the best interest of the public to make three hundred fifty thousand dollars (\$350,000) available to the Long Island Railroad Company, for those capital improvements used in connection herewith.

**NOW THEREFORE**, the parties hereto in consideration of the mutual promises, conditions, terms and obligations herein set forth, agree and covenant as follows:

#### **ARTICLE ONE: DEFINITIONS**

What is intended by the words and expressions defined below, shall be construed to have these meanings except where it is clear from the context that another meaning is intended.

"Agreement" means this document (with appendices).

"STATE" means the People of the State of New York acting by and through the Commissioner of the Department of Transportation.

"COMMISSIONER" means the Commissioner of the New York State Department of Transportation or his designated representative.

"GRANTEE" means the Long Island Railroad Company receiving financial assistance under this Agreement.

"Project or Approved Project" means the design, construction, reconstruction, establishment, improvement, rehabilitation or modernization of rail facilities and other capital improvements conducted pursuant to this Agreement.

"Project Costs" means those costs as defined and contemplated in Section 2.4 for accomplishing the work set forth in Appendix I of this Agreement and computed in accordance with 23 CFR, Part 140, Subpart I, and amendments thereto.

"Project Facilities" means those facilities being constructed on underlying property excluding the underlying property, together with all materials, equipment, facilities or supplies acquired, constructed, reconstructed, established, improved or rehabilitated by or on behalf of the GRANTEE pursuant to the provisions of this Agreement to accomplish the work program set forth in the Work Schedule.

"Work Schedule" means a description of the project as described in Appendix I.

## **ARTICLE TWO: CAPITAL IMPROVEMENTS**

### **Section 2.1. Description of Work**

GRANTEE agrees to complete or cause to be completed the work described in the Work Schedule constituting Appendix I of this Agreement (hereinafter referred to as the "Work Schedule"), which is attached hereto and made a part hereof, in accordance with said Work Schedule as may be modified or amended, and within the time limits

specified in said Work Schedule or any extension thereof.

Any time limits for the accomplishing of work which are set forth in said Work Schedule may be extended or modified by mutual agreement between the parties in writing. No work to be financed by the STATE may begin without written approval from the COMMISSIONER.

#### Section 2.2. Approvals and Compliance

GRANTEE agrees to obtain or cause to be obtained all approvals necessary to progress the work, and also agrees to comply or cause to be complied with all applicable Federal, State and Local Laws, including New York Railroad Law, which in any way impacts work to be accomplished by the project.

#### Section 2.3 Maintenance

GRANTEE agrees to maintain, or arrange to have maintained at no expense to STATE, the Project Facilities, as well as ancillary facilities useful or necessary for providing rail transportation services thereon or therewith, in accordance with usage, for the term of the Agreement as defined in Section 3.17. of this Agreement.

#### Section 2.4. Reimbursement

STATE agrees to reimburse GRANTEE for the STATE's share of eligible Project Costs up to the amount identified in the Work Schedule which GRANTEE incurs for the work performed or facilities provided as described in the attached Work Schedule. Project Costs in excess of STATE funds available for the work shall be the responsibility of GRANTEE. The STATE shall not be obligated to pay nor shall GRANTEE claim reimbursement for the use of facilities or equipment which have been acquired by GRANTEE in whole or in part with funds provided by STATE under this or any other agreement.

Prior to start of construction, GRANTEE shall certify the source and availability of funds for Project Costs which are in excess of STATE funds being made available under this Agreement.

GRANTEE shall submit to STATE fair and reasonable charges less the value of

materials recovered, as evidence by detailed invoices, for the cost of the work performed or facilities provided as described above, in accordance with the procedures acceptable to the COMMISSIONER and the State Comptroller.

STATE shall reimburse GRANTEE in the amount of the approved Project Costs so submitted as to the work performed. In no event shall the cost to STATE of said work exceed the amount specified in the Work Schedule, except as such cost may hereinafter be increased pursuant to a written amendment to this Agreement by the parties hereto. All costs so submitted by GRANTEE shall be subject to approval by COMMISSIONER, and to audit by the COMMISSIONER and the State Comptroller.

Monthly accounting, in accordance with approved certification of such costs incurred by GRANTEE including the last day of the previous month less the value of materials recovered during that month, shall be submitted, provided the amount is \$1,000.00 or more and may be submitted for smaller amounts or lesser time-frames upon special request by the party originating the same and approval of COMMISSIONER. Upon the completion of all said work by GRANTEE pursuant to this Agreement, a final statement of costs shall be submitted to the STATE within one hundred eighty (180) days. Upon receipt of the final statement of costs by the COMMISSIONER, the COMMISSIONER will conduct an audit of the GRANTEE project account records within one hundred eighty (180) days to determine the resources applied or used by GRANTEE in fulfilling the terms of this Agreement. Upon the completion of said audit and concurrence by GRANTEE, the final reimbursement payment will be made to GRANTEE.

In the event that any payments are made by the STATE to the GRANTEE for costs incurred by GRANTEE, which are subsequently determined to be ineligible for reimbursement under this Agreement, STATE may retain an amount equal to any such excess payments from any monies then or which may become due and owing to GRANTEE under the Agreement, or GRANTEE shall repay such amount to STATE within forty-five (45) days from the date GRANTEE receives notice of such determination of ineligibility.

All costs charged to the project shall be properly supported by executed payrolls or abstracts thereof, time, material and accounts payable distribution records, invoices, contracts, vouchers and/or canceled checks evidencing in proper detail the nature and

propriety of the charges. These documents shall be retained and maintained by the GRANTEE, as provided in Section 3.9 herein, so that they will be available for audit by authorized representatives of the COMMISSIONER and State Comptroller.

#### Section 2.5 Electronic Contract Payments

GRANTEE shall provide complete and accurate supporting documentation of eligible expenditures as required by this contract, NYSDOT and the State Comptroller. Following NYSDOT approval of such supporting documentation, payment for invoices submitted by the GRANTEE shall only be rendered electronically unless payment by paper check is expressly authorized by the COMMISSIONER, in the COMMISSIONER's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The GRANTEE shall comply with the State Comptroller's procedures for all Federal and applicable State Aid to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at 518-474-4032. The GRANTEE herein acknowledges that it will not receive payment on any invoices submitted under this Contract agreement if it does not comply with the applicable State Comptroller's electronic payment procedures, except where the COMMISSIONER has expressly authorized payment by paper check as set forth above.

#### Section 2.6 Title to Materials

The materials installed at STATE expense pursuant to this Agreement, excluding the underlying land, shall be the property of the STATE and title thereto shall be vested in the STATE at the time of acquisition and shall remain vested in the STATE for the term of this Agreement. Upon completion of the term of this Agreement as identified in Section 3.17. herein, title shall be vested in the GRANTEE without the need of any execution and delivery of deeds, bill of sale or other title document.

#### Section 2.7 Use and Disposition of Project Facilities

Upon completion and acceptance of the Project Facilities by GRANTEE, GRANTEE shall certify in writing to the COMMISSIONER that the Project Facilities have been completed and accepted in accordance with the WORK SCHEDULE.



GRANTEE shall use or cause to be used and provide or cause to be provided rail service on or in connection with the Project Facilities in a careful and proper manner and comply with and conform to or cause to be complied with and conformed to all applicable Federal, State and Local laws, ordinances and regulations in any way relating to the use, rail service or maintenance thereof.

GRANTEE agrees that, during the period of time during which Title to the Project Facilities paid for by the STATE is held by the STATE or in any event if funding of the STATE's share is from the proceeds of bonds or other obligations issued by the STATE or any of its public benefit corporations, such Project Facilities shall not be sold, rendered unusable, relinquished, or disposed of by GRANTEE without the express written consent of the COMMISSIONER having first been obtained.

#### Section 2.8 Abandonment

GRANTEE shall have the right to abandon part or all of the Project Facilities, or to discontinue or curtail service thereover, provided that:

- a. Said abandonment, discontinuance or curtailment of service has been authorized by the federal Surface Transportation Board or any body having jurisdiction thereof;
- b. At the time of abandonment, discontinuance or curtailment of service, the Project Facilities shall comply with all provisions of said Agreement, and
- c. The GRANTEE has obtained the written permission of the COMMISSIONER prior to abandoning any or all of the Project Facilities.
- d. Should GRANTEE exercise this right to abandon part or all of the Project Facilities or permanently discontinue use thereof, GRANTEE shall reimburse STATE for Project Costs previously reimbursed by STATE under this Agreement based on straight line depreciation of Project Costs reimbursed by STATE calculated over the term of this agreement.

#### Section 2.9 Manner of Performing Work

GRANTEE agrees to undertake or cause to be undertaken and to proceed expeditiously with the work to be accomplished as described in the Work Schedule, and to complete or cause to be completed said work within the time limits specified in said Work Schedule. GRANTEE shall update said schedule upon written approval of the COMMISSIONER as necessary to assure that it accurately reflects the GRANTEE's timetable for completion.

#### Section 2.10 Inspection

During the term of this Agreement, the COMMISSIONER shall have the right to enter upon the Project Facilities for the purposes of inspecting and examining the condition of the Project Facilities and any activities conducted pursuant to this Agreement. Such right shall be exercised only at reasonable times and upon prior notice to GRANTEE.

Such inspection shall be conducted as outlined in the "Manual of Construction Supervision and Inspection Procedures for Work by Railroad Force Account" and/or the "Manual of Construction Supervision and Inspection Procedures for Railroad Let Contracts" as prepared by the Rail Division/Operations Bureau of the New York State Department of Transportation and dated January 1984, as amended. It is intended by the parties hereto that by reference to said manuals, it is agreed that the provisions thereof are deemed to be included herein and are accepted as binding upon the parties for purposes establishing construction inspection standards to the same extent and with the same force and effect as if said manuals had been set forth in and made a part of this Agreement.

#### Section 2.11 Environmental Protection

GRANTEE agrees that all work accomplished under this Agreement will be performed in accordance with all applicable local, State and Federal environmental laws and regulations.

### ARTICLE THREE: GENERAL PROVISIONS

### Section 3.1. Liability and Indemnification

GRANTEE hereby agrees to indemnify and hold harmless the STATE, the Department of Transportation and their respective agents and employees from any and all liability for injury to or death of any person or persons and for loss of, damage to, or destruction of any property or equipment which arises from activities conducted by or on behalf of the GRANTEE pursuant to this Agreement, including all related costs and counsel fees, except when attributable to the fault or negligence of the STATE, the Department of Transportation, its respective agents and employees other than GRANTEE.

GRANTEE agrees to require its contractor(s) to procure and maintain until final acceptance of the Project by the STATE, insurance of the kinds and in the amounts hereinafter provided in insurance companies authorized to do business in the State of New York, covering all companies under this Agreement whether performed by the GRANTEE, its contractor(s) or subcontractor(s). GRANTEE shall furnish to the STATE a certificate(s), in a form satisfactory to the STATE, showing compliance with this Article, which certificate(s), shall provide that the policies shall not be changed or canceled until thirty (30) days written notice has been given to the STATE. The kinds and amounts of insurance required are as follows:

In addition to any other forms of insurance or bonds required under the terms of the contract and specifications, the GRANTEE's Contractor will be required to carry insurance of the following kinds and amounts:

#### a. Public Liability Insurance

With respect to the operations performed, regular Contractor's Public Liability Insurance is provided for a limit of not less than \$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

#### b. Protective Public Liability Insurance

With respect to the operations performed, subcontractors provide regular Contractor's Protective Public Liability Insurance for a limit of not less than

\$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

c. Motor Vehicle Liability Insurance

With respect to any motor vehicles which may be used in connection with the work to be performed, the Contractor shall maintain a policy(s) as required by the Motor Vehicle Laws of the State of New York to bear license plates.

d. Railroad Protective Public Liability Insurance

With respect to the operations the Contractor or any of the Contractor's subcontractors perform, Contractor shall provide Railroad Protective Public Liability Insurance (AAR-AASHTO Form) in the name of all railroad companies operating at the location of the Project Facilities providing for a limit of not less than \$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. Such insurance shall be furnished with an aggregate of not less than \$6,000,000 for damages as a result of more than one occurrence.

The insurance hereinbefore specified shall be carried until all work required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted. Failure to carry or keep such insurance in force until all work is satisfactorily completed shall constitute a violation of the Agreement.

Section 3.2. Assignment

GRANTEE shall not assign this Agreement or any interest herein without first obtaining COMMISSIONER'S written consent thereto, which consent shall not be unreasonably withheld or delayed.

Section 3.3 Approval of Contracts

GRANTEE shall not execute any contract, subcontract or amendment thereto, or obligate itself in any other manner with any third party relating to or with respect to the Project to be undertaken pursuant to this Agreement without the prior written approval of the COMMISSIONER. This Section 3.3. shall apply only to contracts, subcontracts, amendments and obligations pursuant to which GRANTEE incurs costs or expenses which are to be paid for in whole or in part by the STATE pursuant to this Agreement.

#### Section 3.4. Non-Waiver

No covenant or condition of this Agreement can be waived except by the written consent of the parties hereto. Forbearance or indulgence by STATE in any regard whatsoever shall not constitute a waiver of any covenant or condition to be performed by GRANTEE as applicable, and until complete performance by the appropriate party of such covenant or condition, STATE shall be entitled to invoke any remedy available to it under this Agreement or by law or in equity despite such forbearance or indulgence.

#### Section 3.5. Entire Agreement

This instrument and the appendices identified herein constitute the entire agreement between STATE and GRANTEE and it shall not be amended, altered or changed except by a written agreement signed by all of the parties hereto.

#### Section 3.6. Force Majeure

The obligations of the parties hereunder shall be subject to force majeure (which shall include strikes, riots, floods, acts of God, and other causes or circumstances beyond the control of the party claiming such force majeure as an excuse for non-performance), but only as long as, and to the extent that, such force majeure shall prevent performance of such obligations.

#### Section 3.7. Successors and Assigns

All the covenants and obligations of the parties hereunder shall bind their successors and assigns, and any document assigning same will incorporate language whereby assignee will specifically accept and assume all such covenants and

obligations.

### Section 3.8. Interpretation

The Article and Section headings utilized in this Agreement are for convenience only. This Agreement shall be construed in accordance with and governed by the Laws of the State of New York. All appendices attached hereto are integral parts of this Agreement and the provisions set forth in the Appendices shall bind the parties hereto to the same extent as if such provisions had been set forth in their entirety in the main body of this Agreement. Nothing expressed or implied herein shall give or be construed to give to any person, firm or corporation other than STATE or GRANTEE any legal or equitable right, remedy or claim under or in respect to this Agreement. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by COMMISSIONER and GRANTEE unless a provision hereof expressly permits any of the parties to effect termination, amendment, supplementation, waiver or modification hereunder, in which such action shall be taken in accordance with the terms of such provision.

### Section 3.9. Records and Documents

GRANTEE shall maintain books, records and supporting documents in connection with the work to be accomplished pursuant to this Agreement. For a period of fifteen (15) years from the date of submission of the final bill by GRANTEE, books, records, bills, vouchers, payrolls, invoices and other documents of every type and description pertaining to the work to be accomplished under this Agreement shall be available to COMMISSIONER or the State Comptroller, or their authorized representatives, for inspection and audit. All costs charged under this Agreement shall be supported by payrolls and time records, material consumption reports, business expense statements, paid invoices and contracts evidencing in detail the nature of the charges for which reimbursement is sought.

### Section 3.10 Termination or Suspension

The STATE shall have the absolute right to terminate this Agreement, and such action shall in no event be deemed a breach of contract:

(a) If a termination is brought about for the convenience of the STATE and not as a result of unsatisfactory performance on the part of GRANTEE, final payment shall be made based on the actual cost incurred by GRANTEE in accordance with the terms of this Agreement and as verified by audit. In determining the value of the work performed by GRANTEE prior to the termination, no consideration will be given to profit which GRANTEE might have made on the uncompleted portion of the work.

(b ) If the termination is brought about as a result of unsatisfactory performance on the part of GRANTEE, the value of the work performed by GRANTEE, prior to termination shall be established by the percent of the amount of such work completed by GRANTEE and acceptable to the STATE, of the total amount of work contemplated by this Agreement.

( c) If, for any reason, the commencement, prosecution or timely completion of the Project is rendered improbable, infeasible, impossible or illegal, or if GRANTEE is determined by the STATE to be in default under its agreement, then the STATE may terminate the Project upon fifteen (15) days prior written notice to GRANTEE.

#### Section 3.11. Permits

The GRANTEE will obtain or will cause to be obtained all necessary permits, licenses and other forms of permission necessary to construct the Project Facilities described in the Work Schedule.

#### Section 3.12. Severability

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

#### Section 3.13. Notices

Any request, authorization, direction, notice, consent, waiver or other document provided for or permitted by this Agreement to be made upon, give or furnished to, or filed with one party by the other party, shall be in writing and shall be transmitted either: by deposit in the mails of the United States, postage prepaid, to the COMMISSIONER, or to GRANTEE, at the address here before identified; by facsimile transmission (COMMISSIONER 518-457-3183; GRANTEE 904-366-4042); by personal delivery; by expedited delivery service or by e-mail (COMMISSIONER [rhessinger@dot.state.ny.us](mailto:rhessinger@dot.state.ny.us); GRANTEE [gmgreen@lirr.org](mailto:gmgreen@lirr.org)). Each party may change the address at which it shall receive notification hereunder by notifying the other of such change.

#### Section 3.14. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be original.

#### Section 3.15. Relationship to Parties

The relationship of the GRANTEE to the STATE is that of any independent contractor, and the GRANTEE, in accordance with its status as such contractor, covenants and agrees that it will conduct itself consistent with such status, that is will neither hold itself out as nor claim to be an officer or employee of the STATE by reason hereof, and that it will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE, including, but not limited to worker's compensation coverage, retirement membership or credit.

#### Section 3.16. Effective Date of Agreement

This Agreement shall take effect at the time at which it is approved by the State Comptroller.

#### Section 3.17. Term of Agreement

The term of this Agreement shall commence on the effective date thereof specified in Section 3.16 and shall extend until ten (10) years from the date of



completion of the work as accepted by STATE.

Section 3.18. Documents Forming Agreement

This Agreement shall consist of this document and the following attachments: Appendix I, Work Schedule and Appendix A, Standard Clauses for all New York State Contracts.

CONTRACT NUMBER \_\_\_\_\_

THE LONG ISLAND RAILROAD COMPANY  
SIGNATURE

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally came \_\_\_\_\_ to me known to be the

\_\_\_\_\_ of the Long Island Railroad Company, the entity described in and which executed the foregoing instrument acknowledged to me that he executed the same, pursuant to authorization by the Long Island Railroad Company.

\_\_\_\_\_  
Notary Public

Dated: \_\_\_\_\_

CONTRACT NUMBER \_\_\_\_\_

**TOWN OF RIVERHEAD  
SIGNATURE**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me  
personally came \_\_\_\_\_ to me  
known to be the

\_\_\_\_\_ of the Town of Riverhead, the  
entity described in and which executed the foregoing instrument: acknowledged  
to me that he executed the same, pursuant to authorization by the Town of  
Riverhead.

\_\_\_\_\_  
**Notary Public**

**Department Certification**

"In addition to the acceptance of this contract,  
I also certify that original copies of this  
signature page will be attached to all  
other exact copies of this contract."

\_\_\_\_\_  
**COMMISSIONER'S SIGNATURE**

Dated: \_\_\_\_\_

CONTRACT NUMBER \_\_\_\_\_

ATTORNEY GENERAL'S SIGNATURE

COMPTROLLER'S SIGNATURE

\_\_\_\_\_  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Dated: \_\_\_\_\_

### APPENDIX I – WORK SCHEDULE

The project will consist of the items of work set forth in this Work Schedule, and as more fully described in plans and estimates prepared by or on behalf of the LIRR as may be required. Should contract plans, specifications and estimates be required, they shall be prepared by or on behalf of the LIRR and subject to STATE approval and shall be deemed to be included herein as part of the Work Schedule.

The Project provides three hundred fifty thousand dollars (\$350,000) for the installation of a new Number 10 Switch, supplied by others, along the LIRR Main Line at MP 67.56 in conjunction with Comptroller's Contract D032417.

All work will be completed by LIRR personnel.

#### TRACK CONSTRUCTION:

Removal of existing main track, installation of new switch and spur supplied by others, and surfacing of new switch and spur.	\$64,500.00
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#### SIGNAL CONSTRUCTION:

Installation of necessary items to complete signal communication for new switch.	269,000.00
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PROJECT MANAGEMENT:	<u>\$16,500.00</u>
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TOTAL PROJECT COST:	\$350,000.00
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Individual work elements may be adjusted within the total Agreement amount with prior written approval of NYSDOT. NYSDOT's financial participation is limited to \$350,000.00 project costs. Any overage will be the responsibility of the GRANTEE.

This Agreement covers eligible costs incurred on or after April 9, 2010.

All work identified in this Work Schedule shall be completed no later than December 31, 2011.

## **APPENDIX A: STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).
4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.
6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing

wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter or three (3) years after final payment, whichever is later. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in

Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Empire State Development Corporation's Division of Minority and Women's Business Development (MWBD) pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES (NON-FEDERAL AID NEW YORK STATE CONTRACTS).** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland; or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992 (NON-FEDERAL AID NEW YORK STATE CONTRACTS).** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245



The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS (NON-FEDERAL AID NEW YORK STATE CONTRACTS).** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

**23. CONTRACT TERMINATION PROVISION.** The State reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with the requirements contained in State Finance Laws §139j and §139k was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the contract.

**24. PERSONAL INFORMATION SECURITY.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors.